THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.10056 of 1999

Dated : 20.04.2007

Between:

Sangam Appala Sanyasi Rao S/o late Appa Rao and another.

… **PETITIONERS**

And:

The Government of A.P., rep., by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.10056 of 1999

ORDER:

This writ petition is filed seeking a declaration that an extent of 2,422 square meters of land of the petitioners in Sy.Nos.44-15 and 34-12 situated at Mindi village in Visakhapatnam District is outside the purview of the provisions of Chapter-III of Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"), as per G.O.Ms.No.733 Revenue UC-II Department, dated 31.10.1988.

Petitioners state that their father late Sangam Appa Rao filed a declaration under Section 6 of the Act showing the land admeasuring 3,922 square meters in Sy.Nos.44-15 and 34-12 of Mandi village as the holding of his family, but the competent authority, by mistake, had taken into consideration the entire extent as one unit of the father of the petitioners, and thereby held that the petitioners' father had excess

land of 2,422 square meters than the ceiling limit, and accordingly directed to initiate acquisition proceedings under the Act. The petitioners' father died in the year 1981, and by virtue of a Will executed by him, petitioners succeeded to the properties of their father. Subsequently, petitioners approached the competent authority and brought to his notice that they had no knowledge about the proceedings initiated under the Act and further stated that they are entitled to the benefits under G.O.Ms.No.733 dated 31.10.1988, and the competent authority informed the petitioners that their land gets automatically exempted. However, petitioners came to know that the fourth respondent is taking developmental activities in their land. On enquiry, petitioners came to know that final order under Section 9 of the Act was passed on 18.08.1980 and notifications under Sections 10(1) and 10(3) of the Act were published in the gazette, and that notice under Section 10(5) of the Act was sent to their father in the year 1995. Hence, this writ petition.

A detailed counter is filed on behalf of the respondents stating that after the petitioners' father filed declaration under Section 6(1) of the Act, draft statement under Section 8(1) of the Act was issued to him, but he has not submitted any objections. Therefore, final statement under Section 9 of the Act was issued on 23.11.1981 and a notification under Section 10(1) of the Act was issued on 25.11.1981 and the same was also published in the A.P. State Gazette on 24.03.1983, and declaration under Section 10(3) of the Act was also published in the A.P. State Gazette on 12.11.1984. As such, the surplus land to an extent of 2,422 square meters in Sy.Nos.44-15 and 34-12 of Mindi village vested with the Government by virtue of publication of declaration under Section 10(3) of the Act. Thereafter, notice under Section 10(5) of the Act was sent to the petitioners' father on 07.06.1994, but it was returned with an endorsement that the addressee expired. Later on, petitioners refused to receive the notice

sent to them by the office bearer of the respondents. Subsequently on 28.06.1994, notice was sent to the second petitioner by registered post, but the same was also returned with an endorsement that the addressee is absent. As such, after observing all statutory formalities under the provisions of the Act, possession of the excess land was taken by the Mandal Revenue Officer, Gajuwaka on 27.10.1996 and allotted to Gajuwaka Municipality for development of green belt by the District Collector & Chairman of District Level Allotment Committee, Visakhapatnam. At this stage, petitioners filed this writ petition misrepresenting that their land automatically gets exempted by reason of G.O.Ms.No.733 dated 31.10.1988. It is concluded that as the land in question already vested with the Government prior to the issuance of G.O.Ms.No.733, petitioners are not entitled to the benefits under the said Government Order. Therefore, the writ petition is liable to be dismissed.

When this matter is taken up for hearing, learned counsel for the petitioners has drawn my attention to the judgment of a Division Bench of this Court in W.A.No.1696 of 1998 dated 08.06.1999 and another judgment reported in ***P.S.Rao v. Special Officer and Competent Authority*** [1]***.*** In ***P.S.Rao's case,*** a learned Single Judge of this Court observed as under:-

> "Section 10 of the Act falls within the Chapter III of the Act and on that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O., is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as he has assailed the validity of the action taken under Section 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once a statutory authority by exercise of its delegated power frames rules and issues notifications, exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself."

Evidently, the Act came into force with effect from 07.02.1976 and G.O.Ms.No.733 was issued on 31.10.1988, whereas possession of the land in the instant case was alleged to have been taken in the year 1996. Therefore, as observed in ***P.S.Rao's*** case, when G.O.Ms.No.733 was issued by the statutory authority in exercise of its delegated power of exemption, such exemption is required to be implemented and worked out with effect from the date of the statute itself i.e, from 07.02.1976. Hence, this Court has no hesitation to hold that the said judgments squarely apply to the case on hand.

Accordingly, the writ petition is allowed and a Mandamus is issued holding that the land belonging to the petitioners admeasuring 2,422 square meters situated in Sy.Nos.44-15 and 34-12 of Mindi village are outside the purview of Chapter III of the Act, as per G.O.Ms.No.733 dated 31.10.1988. There shall be no order as to costs.

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20.04.2007

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[1] 1998(4) ALD 697